

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sales tax exemption excluding persons who are “primarily engaged” in certain activities and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2019 Iowa Acts, House File 779.

Purpose and Summary

The 2019 Iowa Code provides a sales tax exemption for manufacturers. That exemption excludes persons who “are not commonly understood” to be manufacturers, and excludes a person who engages in any one of five listed activities.

2019 Iowa Acts, House File 779, amends that provision to exclude persons who are “primarily engaged” in one of those five activities. This proposed rule making offers guidance to taxpayers as to how a person is “primarily engaged” in one of those activities and provides several examples of how the provision will be applied.

The Department shared this provision with various interested stakeholders and made several changes prior to the publication of this proposed rule making.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of 2019 Iowa Acts, House File 779, for which there is an estimated reduction in General Fund revenues of \$200,000 in FY 2020 and each year thereafter.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 3, 2020. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following new paragraph **230.15(4)“c”**:

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is “primarily engaged” in any of the activities listed in Iowa Code section 423.3(47) “d”(4)(c). A person is “primarily engaged” in an activity if the person generates more than 50 percent of the person’s gross revenue from its operating business from, or spends more than 50 percent of the person’s time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in “repairing tangible personal property or real property” (Iowa Code section 423.3(47) “d”(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) “d”(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B’s production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.